

REMARKS

In the Office Action dated March 19, 2009, claims 1-45 are pending. Claims 1-35, 37 and 40-45 have been withdrawn from consideration pursuant to Applicants election on September 8, 2008. Claims 36, 38 and 39 have been examined to the extent that these claims read and elected SEQ ID NO: 7.

Claim 36 has been objected to for certain informalities and rejected under 35 U.S.C. § 112, second paragraph. The specification has also been objected to for failing to recite sequence identifiers pursuant to 37 C.F.R. § 821(d).

In respect to the foregoing rejection and objection, Applicants have amended the specification and claims to recite the appropriate sequence identifier, e.g. SEQ ID NO: 7. Moreover, claim 36 has been further amended to delete the term "substantially" in reference to SEQ ID NO: 7. The term "aci" has been amended to recite "actinomycete" in reference to the deposit.

Applicants have also submitted a substitute specification including all changes between the original copy of the specification and a latest amended copy of the specification. In accordance with 37 C.F.R. § 1.125, both a clean and marked-up version are submitted herewith. The amendments are directed to providing sequence identifiers. No new matter has been added.

Accordingly, the objections to the specification and claims and the rejection of claim 36 are overcome. Therefore, Applicants respectfully request withdrawal of the subject objections and the rejection under 35 U.S.C. § 112, second paragraph.

Moreover, Applicants have added new claim 46 directed to an isolated endophytic actinomycete characterized by a nucleotide sequence which has greater than 95% identity to SEQ ID NO: 7. Support for this amendment is found in the context of pages 48 and 49 and

specifically, at page 49, lines 15-19 (see also Table 2 of the specification). No new matter has been introduced.

Claims 36, 38 and 39 have been rejected under 35 U.S.C. § 112, first paragraph, for allegedly failing to comply with the written description requested. With respect to the Examiner's specific rejection of the terms "variants", "mutants" and "homologs" of SEQ ID NO: 7, Applicants have deleted these terms from the claims without prejudice.

With regard to the Examiner's rejection of the terms "metabolites" and "antibodies" in claims 38 or 39, respectfully, Applicants observe that at least one example of a metabolite from actinomycete isolation, i.e., uridote-3-acetic acid (IAA), is shown at pages 112 to 113. Moreover, considering the level of skill in the art, particularly, in relation to the metabolites expressed by a pathogen and the generation of antibodies directed to the pathogen, one skilled in the art would readily be able to isolate and identify metabolites particularly from the disclosed EN16 actinomycete. Moreover, generating antibodies to the claimed actinomycete and to such derived metabolites is well within the ken of the ordinarily skilled artisan in this particular art.

With reference to the deposit information requested by the Examiner, Applicants have enclosed, as Exhibit 1, a copy of the deposit of EN16 (SEQ ID NO: 7) satisfying the requirements of the Budapest Treaty.

Accordingly, the rejection of claims 36, 38 and 39 under 35 U.S.C. § 112, first paragraph, are obviated and withdrawal thereof is respectfully requested.

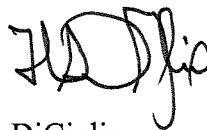
Finally, the Examiner has rejected claim 36 under 35 U.S.C. §102(b), as anticipated by Shimizu, et al. (J. Gen. Plant Pathol. 66) (hereinafter "Shimizu, et al."). The Examiner has alleged that claim 36 is drawn to a variant of a nucleic acid of SEQ ID NO: 7 which is purportedly taught by the prior art by the disclosure that endophytic actinomycetes are used as

controlling agents against fungus. Accordingly, since claim 36 has been amended to delete the term "variant" claim 36 is distinguished from Shimizu, et al. at least to this extent.

Thus, the rejection of claim 36 under 35 U.S.C. § 102(b) is overcome and withdrawal thereof is respectfully requested.

In view of the foregoing amendments and remarks, it is firmly believed that the subject application is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,



Frank S. DiGiglio
Registration No. 31,346

Scully, Scott, Murphy & Presser, P. C.
400 Garden City Plaza-STE 300
Garden City, New York 11530
Telephone: 516-742-4343
FSD:ab

Attachments:

Exhibit 1
Marked-Up Copy of Specification
Clean Copy of Specification

EXHIBIT 1

**BUDAPEST TREATY ON THE INTERNATIONAL
RECOGNITION OF THE DEPOSIT OF MICROORGANISMS
FOR THE PURPOSES OF PATENT PROCEDURE**

INTERNATIONAL FORM

[TO Flinders Technologies
Flinders University
GPO Box 2100
Adelaide SA 5001
ATTENTION: Dr Chris Franco

] **RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT**
issued pursuant to Rule 7.1 by the
INTERNATIONAL DEPOSITARY AUTHORITY
identified at the bottom of this page

NAME AND ADDRESS
OF DEPOSITOR

I IDENTIFICATION OF THE MICROORGANISM

Identification reference given by the
DEPOSITOR:

Streptomyces sp. EN 16

Accession number given by the
INTERNATIONAL DEPOSITARY AUTHORITY:

NM03/35604

II SCIENTIFIC DESCRIPTION AND/OR PROPOSED TAXONOMIC DESIGNATION

The microorganism identified under I above was accompanied by:



a scientific description



a proposed taxonomic designation

(Mark with a cross where applicable)

III RECEIPT AND ACCEPTANCE

This International Depositary Authority accepts the microorganism identified under I above, which was received by it
on 13th May, 2003 (date of the original deposit)

IV RECEIPT OF REQUEST FOR CONVERSION

The microorganism identified under I above was received by this International Depositary Authority on
(date of original deposit) and a request to convert the original deposit to a deposit under the Budapest Treaty was received by it on
(date of receipt of request for conversion)

V INTERNATIONAL DEPOSITARY AUTHORITY

Name: AUSTRALIAN GOVERNMENT
ANALYTICAL LABORATORIES
Address: PO BOX 385 PYMBLE NSW 2073
AUSTRALIA
Phone: (02) 9449 0111
Facsimile: (02) 9449 1653

Signature(s) of person(s) having the power
to represent the International Depositary
Authority or of authorised official(s)

Date: 14th May, 2003

1 Where Rule 6.4(d) applies, such date is the date on which the status of International Depositary Authority was acquired.